

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Western Section
Civil Action No. 05-30008-MAP

DOUGLAS ALBERT
Plaintiff

v.

MICHAEL THOMAS, Individually and in
his Official Capacity as a Police Officer for
the City of Chicopee Police Department,

JOSEPH BRUNELLE, Individually and in
his Official Capacity as a Police Officer for
the City of Chicopee Police Department,

THE CITY OF CHICOPEE
a Municipal Corporation duly established
under the laws of the Commonwealth of
Massachusetts

FILED
JAN 10 2006
U.S. DISTRICT COURT
DISTRICT OF MASS.
CHICOPEE, MA
**DEFENDANT, CITY OF
CHICOPEE'S, ANSWER TO
PLAINTIFF'S COMPLAINT**

Now comes the Defendant, City of Chicopee, in the above-entitled matter and does hereby respond to the Plaintiff's Complaint as follows.

I. JURISDICTION

1. The Defendant, City of Chicopee, (hereinafter referred to as "City of Chicopee") admits the allegations contained in Paragraph No. 1 of the Complaint.
2. The Defendant, City of Chicopee, admits the allegations contained in Paragraph No. 2 of the Complaint.

II. PARTIES

3. The City of Chicopee is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 3 of the Complaint.
4. The City of Chicopee is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 4 of the Complaint.

5. The City of Chicopee is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 5 of the Complaint.
6. The City of Chicopee admits the allegations contained in Paragraph No. 6 of the Complaint.

III. STATEMENT OF FACTS

7. The City of Chicopee admits the allegations contained in Paragraph No. 7 of the Complaint.
8. The City of Chicopee is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 8
9. The City of Chicopee denies the allegations contained in Paragraph No. 9 of the Complaint.
10. The City of Chicopee denies the allegations contained in Paragraph No. 10 of the Complaint.
11. The City of Chicopee denies the allegations contained in Paragraph No. 11 of the Complaint.
12. The City of Chicopee is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 12
13. The City of Chicopee denies the allegations contained in Paragraph No. 13 of the Complaint.
14. The City of Chicopee denies the allegations contained in Paragraph No. 14 of the Complaint.
15. The City of Chicopee denies the allegations contained in Paragraph No. 15 of the Complaint.
16. The City of Chicopee denies the allegations contained in Paragraph No. 16 of the Complaint.

IV. CAUSES OF ACTION

COUNT I: CONSPIRACY TO VIOLATE CIVIL RIGHTS
42 U.S.C. SECTIONS 1983 AND 1985

17. The City of Chicopee repeats each of its answers to the allegations contained in Paragraphs 1 through 16 of the Complaint and incorporates the same by reference herein.
18. The City of Chicopee denies the allegations contained in Paragraph No. 18 of the Complaint.
19. The City of Chicopee denies the allegations contained in Paragraph No. 19 of the Complaint.

COUNT II: INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS

20. The City of Chicopee repeats each of its answers to the allegations contained in Paragraphs 1 through 19 of the Complaint and incorporates the same by reference herein.
21. The City of Chicopee denies the allegations contained in Paragraph No. 21 of the Complaint.
22. The City of Chicopee denies the allegations contained in Paragraph No. 22 of the Complaint.

COUNT III: UNCONSTITUTIONAL POLICY OR
CUSTOM/GROSS NEGLIGENCE

23. The City of Chicopee repeats each of its answers to the allegations contained in Paragraphs 1 through 22 of the Complaint and incorporates the same by reference herein.
24. The City of Chicopee denies the allegations contained in Paragraph No. 24 of the Complaint.
25. The City of Chicopee denies the allegations contained in Paragraph No. 25 of the Complaint.
26. The City of Chicopee denies the allegations contained in Paragraph No. 26 of the Complaint.
27. The City of Chicopee denies the allegations contained in Paragraph No. 27 of the Complaint.

- 28. The City of Chicopee denies the allegations contained in Paragraph No. 28 of the Complaint.
- 29. The City of Chicopee denies the allegations contained in Paragraph No. 29 of the Complaint.

COUNT IV: NEGLIGENCE/MASSACHUSETTS TORT CLAIM
MASSACHUSETTS GENERAL LAW CHAPTER 258

- 30. The City of Chicopee repeats each of its answers to the allegations contained in Paragraphs 1 through 29 of the Complaint and incorporates the same by reference herein.
- 31. The City of Chicopee denies the allegations contained in Paragraph No. 31 of the Complaint.
- 32. The City of Chicopee denies the allegations contained in Paragraph No. 32 of the Complaint.
- 33. The City of Chicopee denies the allegations contained in Paragraph No. 33 of the Complaint.

COUNT V – VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT,
M.G.L. c 12, SECTIONS 11I, ET SEQ.

- 34. The City of Chicopee repeats each of its answers to the allegations contained in Paragraphs 1 through 33 of the Complaint and incorporates the same by reference herein.
- 35. The City of Chicopee denies the allegations contained in Paragraph No.35 of the Complaint.
- 36. The City of Chicopee denies the allegations contained in Paragraph No.36 of the Complaint.
- 37. The City of Chicopee denies the allegations contained in Paragraph No.37 of the Complaint.

COUNT VI – ASSAULT AND BATTERY

- 38. The City of Chicopee repeats each of its answers to the allegations contained in Paragraphs 1 through 37 of the Complaint and incorporates the same by reference herein.

39. The City of Chicopee denies the allegations contained in Paragraph No.39 of the Complaint.
40. The City of Chicopee denies the allegations contained in Paragraph No.40 of the Complaint.

WHEREFORE, the City of Chicopee requests that the Complaint be dismissed and that it be awarded its costs in defending this action.

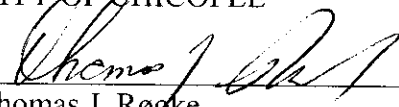
AFFIRMATIVE DEFENSES

1. The Court lacks jurisdiction over the subject matter of the Complaint.
2. The Plaintiff failed to comply with the statutory requirements of Massachusetts General Laws, chapter 258.
3. The Complaint fails to state a claim upon which relief can be granted.
4. The City of Chicopee reserves the right to recover costs and attorney's fees in the event that the above action is found to be frivolous or in bad faith.
5. The alleged actions of the City of Chicopee were neither the proximate nor the actual cause of any damages suffered by the Plaintiffs.
6. The Complaint fails to state a claim upon which relief can be granted under 42 U.S.C. Section 1983 against the City of Chicopee as the conduct alleged in the Complaint does not involve any particular right arising under the United States Constitution but merely seeks vindication of state law.
7. The Complaint fails to state a claim upon which relief can be granted against the Defendant as the conduct did not amount to a reckless disregard or deliberate indifference to the civil rights of inhabitants within the City of Chicopee.
8. Claims against the City of Chicopee are barred as the actions against the Plaintiff are based upon probable cause, and in an attempt to properly detain with the use of no more force than was reasonably necessary.
9. The City of Chicopee answers that at all times it acted reasonably, within the scope of official discretion, and with a good faith belief that the actions were lawful and not in violation of any clearly established statutory or constitutional right of which a reasonable person would have known with regard to all matters in the Complaint which bear upon state or federal law questions.
10. The Plaintiff is barred from recovery because this action has not been brought within applicable statute of limitations.

11. Based upon information and belief, the Defendant's actions were objectively reasonable in light of the facts and circumstances in existing law without regard to underlying intent or motivation.
12. The Court does not have jurisdiction over the Plaintiff's state law claims.

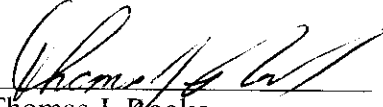
THE CITY OF CHICOPEE DEMANDS A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE.

THE DEFENDANT
CITY OF CHICOPEE


Thomas J. Rooke
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BBO#549087

CERTIFICATE OF SERVICE

I, Thomas J. Rooke hereby certify that on this 7th day of February 2005 served a copy of the foregoing DEFENDANT, CITY OF CHICOPEE'S ANSWER TO PLAINTIFF'S COMPLAINT upon the Plaintiff by mailing first class mail, postage prepaid to Plaintiff's counsel **Robert H. Astor, 1145 Main Street, Suite 403, Springfield, MA 01103.**


Thomas J. Rooke
Associate City Solicitor